

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

when he fell on the ground. He stopped work on February 5, 2011 and returned to work on February 7, 2011. OWCP accepted the claim, assigned File No. xxxxxx553, for an aggravation of a closed dislocation of a lumbar vertebra and displacement of a cervical intervertebral disc.

OWCP also later accepted that appellant sustained a left shoulder and upper arm sprain, left wrist sprain, left rotator cuff syndrome, and left shoulder adhesive capsulitis due to an October 18, 2012 injury, assigned File No. xxxxxx633.<sup>2</sup> In a report dated September 23, 2014, an OWCP medical adviser found that he had five percent permanent impairment of the left upper extremity due to his full-thickness rotator cuff tear under Table 15-5 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant filed a claim for a schedule award (Form CA-7). By decision dated December 19, 2014, OWCP granted appellant a schedule award for six percent permanent impairment of the left upper extremity under File No. xxxxxx633.

Appellant began working four hours per day beginning September 20, 2011. OWCP paid compensation for partial disability for the remaining four hours per day.<sup>3</sup> On July 25, 2013 appellant elected disability retirement.

In an impairment evaluation report dated April 13, 2016, Dr. Daniel C. Valdez, a Board-certified orthopedic surgeon, discussed appellant's treatment for multiple cervical disc herniations with right radiculopathy and an L5-S1 disc herniation with right radiculopathy following a work injury. On examination of the arms, the physician found moderately reduced range of motion, pain on palpation of the upper extremities, right motor deficits, and radicular pain and sensory deficits on the right at C6. For the lower extremities, Dr. Valdez found right radicular pain from the L5 and S1 nerve roots with no loss of motor function or strength. The physician referenced the sixth edition A.M.A., *Guides* and *The Guides Newsletter* (July/August 2009). In reaching his impairment rating, however, Dr. Valdez applied Table 15-15 and Table 15-16 on page 424 of the fifth edition of the A.M.A., *Guides*. He multiplied the value for the identified nerves by the maximum allowed for sensory and motor impairments of each nerve to find six percent permanent impairment of the right upper extremity due to motor and sensory deficits at C6 and five percent right lower extremity impairment due to sensory deficits at L5 and S1. Dr. Valdez found no impairment of the left upper and lower extremities.

Appellant on May 23, 2016 filed a claim for a schedule award (Form CA-7).

An OWCP medical adviser reviewed the evidence on June 23, 2016. He diagnosed cervical strain, cervical disc herniations at C4-5, C5-6, and C6-7, lumbar strain, and degenerative

---

<sup>2</sup> OWCP further accepted that appellant sustained right knee strain as the result of a December 19, 2001 injury, assigned File No. xxxxxx591.

<sup>3</sup> By decision dated August 2, 2011, OWCP denied appellant's claim for disability compensation from April 10 to July 13, 2011. In decisions dated November 8, 2011 and May 1, 2012, it denied his claim for compensation for total disability from August 4 to 15, 2011, and, in decisions dated January 18 and March 19, 2012, denied his claim for wage-loss compensation from August 18 to 26, 2011. OWCP, in a decision dated May 8, 2012, denied appellant's request for an oral hearing on the November 8, 2011 decision as it was untimely filed and was made after he received reconsideration. By decision dated January 16, 2013, it denied his claim for compensation from April 8 to June 15, 2012.

joint and disc disease of the lumbar spine. The medical adviser found that appellant had three percent impairment for loss of sensation at L5, two percent impairment for loss of sensation at S1, which he combined to find five percent right lower extremity impairment. He found no upper extremity impairment, noting that he had previously received six percent left upper extremity impairment.

By decision dated July 14, 2016, OWCP granted a schedule award for five percent permanent impairment of the right lower extremity. The period of the award ran for 14.4 weeks from April 13 to July 22, 2016. OWCP indicated that Dr. Valdez additionally found six percent left upper extremity impairment, but noted that he had already received an award for six percent impairment of the left arm, and thus, was not entitled to an additional award for the left upper extremity.

On appeal appellant contends that OWCP's medical adviser denied an award for his left shoulder as he had received a prior award. He related that he had continued problems with his neck, arm, and fingers, as found by Dr. Valdez.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>4</sup> and its implementing federal regulation,<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</sup>

The sixth edition requires identifying the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).<sup>8</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* for decades has offered an alternative approach to rating spinal nerve impairments. OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures, which memorializes proposed tables as outlined in *The Guides*

---

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> A.M.A., *Guides* 494-531.

*Newsletter*, Rating Spinal Nerve Extremity Impairment (July/August 2009 edition) of the sixth edition.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant sustained an aggravation of a closed dislocation of a lumbar vertebra and displacement of a cervical intervertebral disc due to a February 4, 2011 employment injury under File No. xxxxxx553. It also accepted that he sustained a sprain of the left wrist, a sprain of the left shoulder and upper arm, left rotator cuff syndrome, and left shoulder adhesive capsulitis due to an October 18, 2012 injury under File No. xxxxxx633. OWCP had awarded six percent permanent impairment of the left upper extremity under File No. xxxxxx633 as a result of his full-thickness rotator cuff tear.

On May 23, 2016 appellant filed a claim for a schedule award under the current file number. In support of his claim, he submitted an April 13, 2016 impairment evaluation from Dr. Valdez. Dr. Valdez found reduced upper extremity range of motion, pain on palpation, and motor deficits and sensory deficits on the right at C6. He further found that appellant had radicular pain in his lower extremity from the L5 and S1 nerve roots without reduced motor function or strength. Dr. Valdez indicated in his report that he was applying the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*. In reaching his impairment determination, however, Dr. Valdez used Table 15-15 and Table 15-16 on page 424 of the outdated fifth edition of the A.M.A., *Guides* to find six percent permanent impairment of the right upper extremity due to motor and sensory deficits at C6 and five percent right lower extremity impairment due to sensory deficits at L5 and S1. He found no impairment of the left upper and lower extremities. OWCP, however, uses the sixth edition of the A.M.A., *Guides* to calculate schedule awards.<sup>10</sup> A medical opinion based on an inappropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of permanent impairment.<sup>11</sup>

An OWCP medical adviser reviewed Dr. Valdez' finding and concurred with his impairment rating. He did not, however, reference *The Guides Newsletter* in explaining his rating. The medical adviser further did not address whether an adjustment from the default value was warranted due to grade modifiers.<sup>12</sup> Consequently, his opinion is insufficient to establish the extent of the right lower extremity impairment.

Regarding the upper extremity, the Board finds that appellant has not submitted any evidence showing that he has more than the previously awarded six percent impairment of the

---

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, note 5 (January 2010). *The Guides Newsletter* is included as Exhibit 4; see also *E.P.*, Docket No. 16-1154 (issued October 26, 2016).

<sup>10</sup> See *supra* note 7.

<sup>11</sup> See *P.O.*, Docket No. 15-1631 (issued June 2, 2016); *Fritz A. Klein*, 53 ECAB 642 (2002).

<sup>12</sup> *The Guides Newsletter* provides that the default value may be adjusted using the formula described in the A.M.A., *Guides* based on functional history, physical examination, and clinical studies.

left upper extremity.<sup>13</sup> Dr. Valdez, however, found that he had six percent permanent impairment of the right upper extremity. OWCP determined that the physician's upper extremity impairment rating duplicated the prior award. However, the prior award was for the left rather than the right upper extremity. On remand, it should obtain clarification regarding the extent of appellant's right lower extremity impairment and determine whether he is entitled to a schedule award for the right upper extremity as the result of his accepted work injury.<sup>14</sup> Following such further development as deemed necessary, OWCP should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2016 decision is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 6, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

---

<sup>13</sup> See *D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993) (it is appellant's burden to submit medical evidence supporting the degree of permanent impairment).

<sup>14</sup> See *T.H.*, Docket No. 14-0943 (issued November 25, 2016) (the Board held that to ensure consistent results and equal justice under the law, OWCP shall, through its implementing regulations and/or internal procedures, establish a consistent method for rating upper extremity impairment under the sixth edition of the A.M.A., *Guides* prior to further development of medical evidence relating to permanent impairment for upper extremity claims).